

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

In Re:	§	
	§	
JOHN C. BAUM AND	§	CASE NO. 03-60408-RLJ-7
LINDA D. BAUM,	§	
	§	
Debtors	§	
<hr/>		
UNITED STATES TRUSTEE,	§	
	§	
Plaintiff	§	
	§	
VS.	§	ADVERSARY NO. 04-6003
	§	
JOHN C. BAUM,	§	
	§	
Defendant	§	

MEMORANDUM OPINION

By this adversary, the plaintiff, the United States Trustee, contends that John Baum, committed various acts both pre-petition and post-petition, which constitute valid grounds to deny his discharge pursuant to 11 U.S.C. § 727. Baum denies these claims.

Findings of Fact

1. The debtors, John and Linda Baum, filed this bankruptcy petition under Chapter 11 of the Bankruptcy Code on November 4, 2003. They filed it *pro se*. The Court converted the case to Chapter 7 on December 12, 2003 and Harvey Morton was appointed Trustee. The United States Trustee timely filed this adversary proceeding seeking to deny discharge solely to John Baum (sometimes referred to as “Baum”) under 11 U.S.C. § 727.

2. Prior to filing this case, Baum had been engaged in the business of repairing roads and highways under contracts with the Texas Department of Transportation. This business

involved an extensive amount of equipment and vehicles, has involved several million dollars, and has engaged a number of projects at locations widely spread across the state. Of necessity, the business required a reasonably sophisticated and intelligent person to negotiate, manage, and administer the business.

3. In addition to Baum's construction business, he also participated in the buying, selling, breeding, raising, and training of horses. He used the horses to participate in a number of roping and other rodeo activities. Most of Baum's horses were registered quarter horses and registered paint horses through the appropriate organizations. Baum bought from and sold horses to third parties and to family members. The record of these transfers is at best muddled, but the evidence suggests that these horses were typically worth between several hundred dollars and several thousand dollars each.

4. John C. Baum, his company, Baum Construction Company, Inc., and a sole proprietorship which he operated, Baum Construction Company, had, collectively, an extensive lending history with the First Coleman National Bank (the "Bank"). The parties introduced into evidence seventeen promissory notes, sixteen security agreements, and a deed of trust. The notes date from September 1, 2000, to March 24, 2003; the security agreements date from September 1, 2000, to January 24, 2003.

5. On many of the loans, the borrower is identified as Baum Construction Company, Inc. with John Baum signing the notes as follows:

BAUM CONSTRUCTION COMPANY, INC.

BY: _____
JOHN BAUM, PRES. & IND.

Eight of the first nine loans between the parties, as represented by the notes and security agreements introduced into evidence, dating from September 1, 2000, to March 25, 2002, are so designated.¹ The March 25, 2002 security agreement provides that the debtor includes Baum Construction Company, Inc., Baum Construction Company, “and/or John C. Baum.” Chronologically, the next loan, dated August 27, 2002, for \$43,000, reflects Baum Construction Company as the borrower and is signed by John Baum as owner. The accompanying security agreement of the same date states that Baum Construction Company is a “proprietor.” The debtor in the security agreement is defined as Baum Construction Company, Baum Construction Company, Inc., and John C. Baum.

6. The next loan, dated August 30, 2002, for \$750,000, which refinanced outstanding debt and provided financing for the construction of the Baum’s house on a 392-acre ranch owned by the Baums, reflects John C. Baum and Linda Baum as borrowers. The loan is secured by a deed of trust lien of the same date covering the ranch property.

7. Baum Construction Company signed a note for \$250,000 on September 27, 2002. John Baum signed as owner and individually. The accompanying security agreement of the same date recites that Baum Construction Company is a sole proprietorship and that it secures the debts of Baum Construction Company, Baum Construction Company, Inc., and/or John C. Baum. It further provides that such parties are pledging essentially all their inventory, equipment, farm products (including livestock), accounts, instruments, documents, chattel paper, general intangibles, and government payments and programs.

8. Thereafter, the remaining loans – dated October 25, 2002, for \$650,000, October

¹A loan dated March 27, 2001, for \$13,500 reflects John C. Baum as the borrower. It also indicates it was paid off on May 5, 2001.

28, 2002, for \$200,000, another October 28, 2002 loan for \$450,000, a loan dated December 26, 2002, for \$225,000, and lastly, a March 24, 2003 loan for \$15,000 – each reflect John C. Baum as the borrower. The October 25, 2002 security agreement has the same broad coverage as does the September 27, 2002 security agreement, but includes a list of horses, including Smart Kid Lena and Justalena Peppy Dawn. Linda Baum signed an identical security agreement on October 25, 2002. Finally, John C. Baum signed two more security agreements, on December 26, 2002, and January 24, 2003, both essentially covering all his assets.

9. Much evidence was introduced concerning transactions by Baum with respect to several horses, the Trustee contending such transactions reveal that Baum defrauded the Bank by attempting to dispose of the horses out of trust. The horses principally at issue are named Justalena Peppy Dawn, Colonel Stone, Miss Cadillac Model, Tari Gay Diamond, and Kay Reed Deck. The American Quarter Horse Association records reflect that Baum purchased Justalena Peppy Dawn on January 1, 2002, Miss Cadillac Model on March 30, 2000, Tari Gay Diamond on October 18, 2002, and Kay Reed Deck on March 30, 2000. The American Paint Horse Association records reflect that Baum purchased Colonel Stone on April 10, 2001.

10. Baum purportedly sold Justalena Peppy Dawn on October 20, 2002, to Billy Dean “Bubba” Wilson, Miss Cadillac Model to Michael Gibbs on May 10, 2002, and Tari Gay Diamond to L. P. Carter IV on October 18, 2002. He purportedly sold Kay Reed Deck, also to Michael Gibbs, on May 10, 2002.

11. The Bank, asserting a security interest, sued Carter, Gibbs, and Wilson to recover the horses transferred by Baum. The Bank ultimately recovered Justalena Peppy Dawn, Miss Cadillac Model, Tari Gay Diamond, and Kay Reed Deck. Each of these horses, except

Justalena Peppy Dawn, were recovered from Baum's ranch.

12. The records of the American Paint Horse Association reflect that on January 23, 2004, Baum filed a transfer report with such organization reflecting he had transferred Colonel Stone and another horse, Hickorys Up In Smoke, to his son Taylor and his daughter Elizabeth, respectively, and claiming May 10, 2002, as the actual date of the transfer.

13. As stated, the Baums filed their case, *pro se*, on November 4, 2003. The schedules of assets and liabilities ("schedules") and the statement of financial affairs ("SOFA") were therefore due on November 19, 2003. On that day, the Baums filed a motion seeking additional time to file their schedules and the SOFA. The Court granted the motion on November 24, 2003, extending the Baums' deadline to December 4, 2003.

14. On November 10, 2003, the Bank filed two motions. The first motion sought to convert this case to Chapter 7 or, alternatively, to appoint a Chapter 11 trustee. The second motion sought to lift the automatic stay to allow the Bank to foreclose the collateral securing the debt. The Court conducted hearings on these motions on December 10, 2003.

15. The Court converted the case to Chapter 7, the order being entered December 15, 2003; the Court terminated the automatic stay as to the Bank by order entered December 16, 2004.

16. Because of the conversion to Chapter 7, notice was provided on December 22, 2003, that the section 341 meeting of creditors set for December 16, 2004, was cancelled. It was subsequently rescheduled for January 22, 2004, by notice of December 15, 2003.

17. The Baums failed to file their schedules and the SOFA by December 4, 2003. They did, however, obtain counsel, Robert Truitt, in late December. Mr. Truitt, on the Baums' behalf, filed a motion on December 29, 2003, seeking an extension to file schedules

and the SOFA as he had been hired that very day and he needed additional time, twelve days, to prepare and file the schedules and the SOFA. The Court granted this request and the Baums filed their schedules and the SOFA on January 10, 2004, several days prior to the rescheduled 341 meeting.

18. Baum offered various excuses for failing to timely file his schedules prior to employing counsel.

19. The December 16, 2003 order granting the Bank's motion for relief from stay permitted the Bank to collect and foreclose upon its collateral. The order specifically gave the Bank the right to take possession and sell its collateral.

20. Tommy Sloan, president of the Bank, served as the Bank's representative in the administration of Baum's loans and the collateral. Mr. Sloan testified that on or about December 18, 2003, the Bank was unable to enter Baum's property. The Bank thus obtained a writ of sequestration from the 42nd District Court in Coleman County. The district court granted the motion and entered an order accordingly on December 31, 2003. On January 5, 2004, the Bank appeared with representatives of the Coleman County sheriff's office at Baum's ranch and seized its collateral, including a number of horses.

21. Baum's schedules, filed January 10, 2004, indicated he owned a Preifert portable arena with a fair market value of \$12,000. Mr. Sloan testified that this arena was on Baum's ranch when the Coleman County Sheriff served the writ of sequestration on Baum on January 5, 2004. The Bank did not seize the arena at that time because it anticipated foreclosing the Baums' 392-acre ranch the next day and did not want to incur additional expenses in moving the arena. Although the Bank foreclosed the ranch on January 6, 2004, the Bank did not actually physically take possession of the ranch until February 11, 2004. On that day,

according to Mr. Sloan, the portable arena was no longer on the ranch property. Baum denies removing the portable arena from his property and maintains the arena was taken from his property with his knowledge, but without his permission, by John Curtis.

22. Baum's amended schedules, filed January 29, 2003, do not list the Preifert arena as an asset of the estate. Instead the amended schedules and SOFA reflect that the arena belonged to Russell Johnson, Baum's friend. Mr. Johnson's testimony at trial told a different story, however. He testified that Baum tried to give him the portable arena, sometime in 2003, but he declined and never took possession or control of the arena from Baum at any time. Baum's account of the portable arena changed once again at trial. Baum maintains that he bought the arena, paid for its upkeep and kept it on his property, but did not own it. Baum further testified that he was aware John Curtis was to remove the arena from the ranch, but that he never gave Mr. Curtis permission to do so.

23. Mr. Curtis, also a friend of Baum's, testified through deposition that he did in fact remove the arena from Baum's property. He stated, contrary to Baum's account, that Baum asked him to remove the arena from the ranch because it belonged to Mr. Russell, who, coincidentally, is Mr. Curtis's nephew. Mr. Curtis agreed to remove the arena, at Baum's request, and hold it for Mr. Russell to pick up at a later date.

24. Baum's schedules and SOFA do not list any inventory of used guardrail. Nevertheless, on or about February 20, 2004, Baum permitted a quantity of damaged guardrail to be removed from his property by Mason Cullins, an agent of the Pine Street Salvage Yard in Abilene. This guardrail was taken from Baum's ranch, delivered to Pine Street Salvage, and purchased by Pine Street Salvage for \$532.40. Mr. Morton, the Chapter 7 Trustee, was able to obtain the check that was issued for the purchase. There has been no credible evidence

produced that this guardrail became someone else's property before this case was either filed or converted to Chapter 7.

25. In June 2001, prior to buying his ranch, Baum sold the house he lived in, located at 476 F.M. 503, to Dr. Michael Bailey, a friend of Baum's and a local doctor. In a separate transaction that same day, Baum sold Dr. Bailey a large steel gun safe for \$1,100. The safe, therefore, remained at Dr. Bailey's home. Dr. Bailey described the safe as tall, green, approximately two feet wide, two feet deep and made completely of steel. He estimated that the safe holds approximately twenty-four guns. When he took possession of the safe from Baum, the safe was full of guns which Dr. Bailey testified belonged to Baum. Most of the guns in the safe were rifles, although there were a few pistols and a couple of shotguns as well. Dr. Bailey kept the same combination to the safe that Baum had used. Thus, only he, his wife, and Baum knew the combination.

26. Dr. Bailey testified that Baum came to his home several times in the fall of 2003 and the early part of 2004 to retrieve guns from the gun safe. In November 2003, Baum took two rifles. At the time of trial, the safe was empty save the guns owned by Dr. Bailey.

27. Maria Hurtado, Dr. Bailey's housekeeper, witnessed three unidentified men entering Dr. Bailey's home in January of 2004. She did not let the men inside but noticed them as she was cleaning the home. She maintains she witnessed these three men leave Dr. Bailey's home with three guns, all rifles, after being in the home for approximately twenty minutes.

28. Baum testified that the safe contained his guns, guns for his son, and guns for third parties. He claims to have removed all of these guns from November 2003 through January 2004. In that time, Baum claims to have removed three shotguns and two .22 caliber

rifles, each of which he claims belong to his son.

29. Mike Barker, a former friend of Baum's, testified at trial regarding Baum's firearms. He testified that Baum, in October 2003, took him to Dr. Bailey's home and showed him all the guns in the safe. After viewing Dr. Bailey's safe, noting it was full to capacity, Mr. Barker estimated that it held approximately thirty guns. Baum told Mr. Barker that all of the guns in the safe, save two, belonged to him. Their value, Baum said, was approximately \$30,000.

30. Mr. Barker considered buying a .45 Colt pistol from Baum at that time but he and Baum could not reach an agreement on the price of the gun. James Keith Neal ultimately purchased this gun from Baum, paying approximately \$500.

31. Mr. Barker and Baum do enjoy a troubled past, however. The evidence reveals that Mr. Barker sent a letter to Baum ending their friendship, though the date is not discernable from the document. Baum admitted at trial that he had shown Mr. Barker the guns at Dr. Bailey's home, but that the only gun in the safe that he owned personally was a .308 rifle. Baum testified that the .45 Colt handgun and both of the .22 rifles in the safe were owned by his son.

32. Baum lists three guns in his schedules: a .308 caliber rifle, a .22 caliber mag rifle, and a .22 rifle. His SOFA fails to reference any firearms that he is currently holding for others, or any gift or transfer of firearms to others in the year prior to filing this case, other than two shotguns and a rifle sold for \$600 to a Keith Neal. Baum testified that apart from the guns listed in his schedules, he owns no other guns.

33. Pat Carter, Baum's brother-in-law, testified that he is currently holding three guns for Baum's son, a pistol, a .22 rifle, and a shotgun. Baum told Mr. Carter that these guns all

belonged to his son.

34. Several years before Baum filed this case, James Neal, a friend of Baum and the owner of three pawnshops, facilitated Baum's purchase of a diamond tennis bracelet from Ed Alemon, a business acquaintance of Mr. Neal, for approximately \$4,000 to \$5,000. Baum, according to his wife Linda Baum, initially gave the bracelet to her. She said it was not her "style" so she and Baum purportedly gave the bracelet to his mother, Joan Billings, in January 2002. Ms. Billings testified that she gave the bracelet back to Baum in October 2003 because she realized that he was experiencing financial difficulties. In November of that year, Baum contacted Mr. Neal regarding the possibility of selling the bracelet back to Mr. Alemon. Mr. Alemon purchased the bracelet back for approximately \$2,000 to \$3,000. Baum's schedules and SOFA do not reflect Baum's sale of the tennis bracelet.

35. Based on the recollection of Dick Harris, an attorney who attended Baum's first meeting of creditors, Baum was specifically asked about the existence and/or disposition of the proceeds of the sale of the tennis bracelet. Baum's reply was simply that he had sold some jewelry or had been given some in the year before his bankruptcy.

36. If appropriate, these findings of fact shall be considered conclusions of law.

Conclusions of Law

Generally

37. This Court has jurisdiction over this matter under 28 U.S.C. § 1334 and § 157.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J).

38. Under 11 U.S.C. § 307 and § 727(c)(1), the United States Trustee has standing to file and prosecute this complaint.

39. The Trustee raises twenty-one causes of action, several of which are based on section 727(a)(2) of the Code.² Section 727(a)(2) provides as follows:

(a) The court shall grant the debtor a discharge, unless—

...

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

....

40. The plaintiff bears the burden to prove each of the elements of section 727 by a preponderance of the evidence. *In re Womble*, 289 B.R. 836, 844 (Bankr. N.D. Tex. 2003); see FED. R. BANKR. P. 4005. The plaintiff may demonstrate the requisite intent of the defendant by circumstantial evidence. *Pavy v. Chastant (In re Chastant)*, 873 F.2d 89, 91 (5th Cir. 1989). Circumstantial factors which tend to prove actual intent include:

(1) the lack or inadequacy of consideration; (2) the family, friendship or close associate relationship between the parties; (3) the retention of possession, benefit, or use of the property in question; (4) the financial condition of the party sought

²Nine of the causes of action allege violations of section 727(a)(2) of the Code. These are the fifth, sixth, seventh, eighth, eleventh, twelfth, fourteenth, sixteenth, and nineteenth causes of action.

to be charged both before and after the transaction in question; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and (6) the general chronology of the events and transactions under inquiry.

In re Dennis, 330 F.3d 696, 702 (5th Cir. 2003) (citing *Chastant, supra*). Any one or more of these factors may suffice to find actual fraudulent intent, and an accumulation of several factors strongly indicates that the debtor possessed the requisite intent. *FDIC v. Sullivan (In re Sullivan)*, 204 B.R. 919, 941 (Bankr. N.D. Tex. 1997), *Cullen Center Bank & Trust v. Lightfoot (In re Lightfoot)*, 152 B.R. 141, 148 (Bankr. S.D. Tex. 1993).

41. A denial of discharge under section 727(a)(2) consists of two elements: (1) the debtor must have transferred or concealed property; (2) with the intent to hinder, delay, or defraud creditors. See 11 U.S.C. § 727(a)(2); *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir.1997); *Rosen v. Bezner*, 996 F.2d 1527, 1531 (3rd Cir.1993). Section 727(a)(2) “must be strictly construed in favor of the [debtor].” *J-W Operating Co. v. Rothrock (In re Rothrock)*, 96 B.R. 666, 670 (Bankr. N.D. Tex. 1998) (McGuire, J.); accord *Rosen*, 996 F.2d at 1531 (“Completely denying a debtor his discharge, as opposed to avoiding a transfer or declining to discharge an individual debt pursuant to § 523, is an extreme step and should not be taken lightly”).

42. Harm to a creditor is not an element required by section 727(a)(2). See *Keeney v. Smith (In re Keeney)*, 227 F.3d 679, 685 (6th Cir. 2000).

Causes Five and Six

43. Causes of action five and six of the Trustee’s complaint allege under section 727(a)(2) that Baum, with the requisite intent, removed or concealed the Preifert portable arena, the .45 caliber Colt handgun, other “weapons” (or firearms), the diamond tennis

bracelet, and the used guardrail.

44. Baum filed this case on November 4, 2003. *See* Findings of Fact 1. Baum's original schedules reflect his ownership of the arena. *Id.* at 21. Baum testified that the arena was removed with his knowledge, though not with this permission sometime in January 2004. The removal thus occurred post-petition and post-conversion. Baum's amended SOFA reflects a change in ownership of the Preifert arena. *See id.* at 22. At odds with the amended SOFA, however, is Mr. Johnson's statement that Baum tried to give him the arena but he refused the gift and possession of the arena. The Court considers this testimony credible as both Mr. Johnson and Baum testified at trial that they were close friends, thus removing any reason for Mr. Johnson to taint his testimony against Baum. Further, John Curtis, another friend of Baum's and Mr. Johnson's uncle, testified that he removed the arena from Baum's ranch at Baum's request.

45. The Trustee alleges pre-petition transfers or concealment of several firearms purportedly owned by Baum; specifically, that such transfers or concealment occurred within the year prior to his filing bankruptcy. Baum lists three guns in his schedules: a .308 caliber rifle, a .22 caliber mag rifle, and a .22 caliber rifle. *See* Findings at 32. His SOFA lists the transfer of two shotguns and a rifle to Mr. Neal. *See id.* Baum testified at trial that he owns no other guns than those listed in his schedules and that he is not holding any guns for any other party, other than that listed in his SOFA. *See id.*

46. Several of Baum's friends and roping partners, however, testified differently. Dr. Bailey bought Baum's gun safe on the same day he bought Baum's former residence. Dr. Bailey testified that the safe on that day was full of firearms, mostly rifles. *See* Findings at 25. He said the safe holds approximately twenty-four guns and that none of the guns in the safe

were his on that day. *Id.* Mr. Barker testified similarly at trial that Baum showed him Dr. Bailey's gun safe, that it held approximately thirty guns and was completely full. *Id.* at 29. As only Baum, Dr. Bailey and Dr. Bailey's wife are the only three persons who have the combination to the safe, the Court cannot accept Baum's denial that the remaining guns in the safe belonged to any person other than Baum. *See id.* at 25. At the very least, the guns were subject to Baum's possession and disposition at times which should have been listed on the SOFA.

47. Dr. Bailey and his housekeeper, Ms. Hurtado, both testified that Baum came to his home several times in the fall of 2003 and the early part of 2004 to remove guns from the safe. *See Findings* at 25-26. Baum admitted as much at trial. The Court simply cannot credit Baum's story that he merely removed a few guns belonging to him and his son. The record reveals that the safe was full of guns. The evidence is somewhat inconsistent regarding the number of guns removed from the safe by Baum and the number of guns owned by his children. *See Findings* 26-33. As Baum claims only three guns as his own, the total he claims he removed from the safe does not account for all the guns that Dr. Bailey and Mr. Barker said were in the safe. The Court lacks sufficient and credible evidence to contradict the testimony of Dr. Bailey, Ms. Hurtado, and Mr. Barker that several other firearms belonged to Baum. Moreover, Baum assumes that his claim that guns belong to his minor children somehow excuses him from disclosing and identifying such guns. Some of the firearms were apparently removed post-petition. The Court finds that Baum owned, transferred, or concealed more firearms than are disclosed on his schedules and SOFA. Baum offered no evidence explaining the disappearance of the firearms. The Court finds that omitting the firearms and failing to explain the firearms' disposition constitutes an intentional and fraudulent concealment from

the Trustee.

48. Similarly, Baum permitted the post-petition post-conversion removal of a quantity of damaged guardrail from his ranch. There is no credible or substantiated evidence that this guardrail did not become property of the estate when the case was filed. After conversion to Chapter 7, Baum was without authority to transfer or dispose of the guardrail. That Baum had an intent to hinder, delay, or defraud in trying to dispose of the property is evident from the fact that Baum failed to consult with the Trustee or any other party-in-interest before attempting to dispose of the guardrail, and that the guardrail was in Baum's possession and control when the case was filed. As with the portable arena, Baum caused or allowed the property to be removed after counsel had been retained, and after the Baums filed their schedules (both original and amended) wherein they do not show the guardrail as property being held for another.

49. Causing or permitting this guardrail to be removed from his property and sold, either directly or through Mr. Gardner, was a post-petition transfer which removed and concealed property of the estate from the Trustee. This transfer has attendant to it sufficient badges of fraud from which this Court infers Baum's intent to hinder, delay, and/or defraud.

50. The Court does not consider Baum's disposition of the .45 caliber handgun and the diamond tennis bracelet as constituting a section 727(a)(2) violation. These items were transferred pre-petition for valuable consideration. The Court is unaware of any lien against these items. Under these circumstances, Baum did not possess the requisite interest to hinder, delay, or defraud a creditor or an officer of the estate. This does not, however, excuse Baum from his obligation to disclose the transfers of these items in his bankruptcy schedules.

Causes Seven, Twelve, and Sixteen

51. Cause seven of the United States Trustee's Complaint alleges, under section 727(a)(2)(A), that Baum's post-petition post-conversion attempt to secure the release of the horses Hickorys Up In Smoke and Colonel Stone, after their seizure by the Bank, constitutes a removal or concealment of the Bank's collateral and/or property of the estate with an intent to hinder, delay, or defraud. Causes twelve and sixteen of the United States Trustee's Complaint alleges under section 727(a)(2)(A) and section 727(a)(2)(B) that Baum's post-petition post-conversion attempt to obtain the release of the horses, Tari Gay Diamond, Kay Reed Deck, Miss Cadillac Model, and Justalena Peppy Dawn, constitutes a removal or concealment of the Bank's collateral and/or property of the estate with an intent to hinder, delay, or defraud.

52. The Court finds that Baum attempted to conceal his ownership of Colonel Stone and Hickorys Up in Smoke. He purportedly transferred these horses to his children, a transfer he contends occurred in May 2002. However, he did not confirm these transfers until January 2004, after he filed bankruptcy. Baum did not disclose these horses in his schedules or SOFA as being held for his children. The Court does not find Baum's explanation as credible. The Bank repossessed these horses, which belies their ownership by anyone other than Baum.

53. Justalena Peppy Dawn and Tari Gay Diamond were purportedly sold on October 20, 2002, and October 18, 2002, respectively. If such sales were effective, the horses were transferred after they had been pledged to the Bank. The Bank's lien against these horses arose prior to the transfer dates. The September 27, 2002 security agreement secures the debt of John Baum personally and covers all his livestock. The Court is satisfied that Baum attempted, at the least, to conceal his ownership of these horses.

54. In light of the Court's findings and conclusions regarding Justalena Peppy Dawn

and Tari Gay Diamond, the Court need not address Baum's purported transfers of Miss Cadillac Model and Kay Reed Deck. These horses were purportedly transferred on May 10, 2002. At this time, the extent of the Bank's liens against the personal property of Baum is less clear. But, as with the other horses, Baum appears to have asserted possession and/or control of these two horses until they were ultimately recovered by the Bank. The Bank's recovery of these horses is further evidence of Baum's ownership of the horses.

Causes Twenty and Twenty-One

55. The Trustee, at causes twenty and twenty-one, contends Baum made a false oath at his creditors' meeting and in his schedules by failing to disclose ownership of and transactions concerning his firearms, the diamond tennis bracelet, and the .45 Colt handgun.

56. Section 727(a)(4)(A) states:

(a) The court shall grant the debtor a discharge unless –

...

(4) the debtor knowingly and fraudulently or in connection with the case –

(A) made a false oath or account;

....

To deny the debtor a discharge under section 727(a)(4)(A), the plaintiff must show (1) that the debtor made a statement under oath; (2) that the statement was false; (3) that the debtor knew the statement was false; (4) that the debtor made the statement with fraudulent intent; and (5) that the statement related materially to the bankruptcy case. *Sholdra v. Chilmark Fin., LLP (In re Sholdra)*, 249 F.3d 380, 382 (5th Cir. 2001); *Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174, 178 (5th Cir. 1992).

57. Baum failed to schedule any disposition of the diamond tennis bracelet.

Regarding this alleged transfer of property pre-petition, Baum testified that his mother gave

him the bracelet back so that he could sell it for much needed cash. *See Findings at 34.* Baum fails to recognize, however, that by receiving the bracelet back from his mother in October of 2003, he became the rightful owner of the bracelet. Despite his testimony that he never actually “owned” the bracelet, but rather simply facilitated his mother’s wish to sell the item herself and give him the money, the Court finds that Baum owned the tennis bracelet as of October 2003. The transfer occurred approximately two weeks prior to the bankruptcy filing.

58. Having found that Baum owned more firearms when this case was filed and converted than were disclosed, and that Baum sold a diamond bracelet and a .45 Colt handgun pre-petition and within the time frame rendering them subject to disclosure in Baum’s schedules and SOFA, the Court also finds that Baum made a false oath when he filed the schedules and the SOFA which omitted information concerning the firearms and the transactions regarding the diamond tennis bracelet and the .45 Colt handgun. Additionally, the Court finds that Baum made a false oath when he testified at the creditors’ meeting that he did not own other firearms, was not holding firearms for others, and/or had not transferred any firearms. Failing to disclose these items under such circumstances constitutes a false oath especially when Baum knew he owned such items. Moreover, his ownership of such assets and the transactions regarding same is clearly material to the case. For the same reasons and from the same circumstances as the Court found these events to have occurred, the Court also infers Baum’s intent to defraud in making these statements. These constitute false oaths warranting denial of discharge under section 727(a)(4)(A).

Requisite Intent

59. Baum meets the requisite intent required to deny discharge under section 727(a)(2) and (a)(4) of the Bankruptcy Code. Baum vacillated on whether the portable arena

was his or not. He first listed it on his schedules as his. He then amended his schedules to state he was holding it for his friend, Russell Johnson. He never provided a real explanation concerning the disappearance of numerous firearms. He attempted to explain this, in part, by stating both in testimony and in his schedules that a few were owned by his minor children. He failed to disclose the guardrail in his schedules, but actively participated in the transfer of the guardrail post-petition. His purported transfers of horses were to family members and friends. The record of the transfers of Colonel Stone and Hickorys Up In Smoke was made almost two years after the supposed date of the transfer. The horses, with the exception of Justalena Peppy Dawn, were recovered from Baum's ranch, though they had, by his account, been transferred many months prior. While the Court does not conclude that Baum's failure to timely file schedules while proceeding *pro se*, in itself, justifies denial of discharge, it is evidence of his reluctance to disclose his assets and financial affairs. The same is true with respect to his failure to disclose the transfer of the tennis bracelet and the Colt .45 handgun. Finally, Baum's testimony was hesitant, evasive, at times antagonistic, and lacked candor. The cumulative effect of all these matters justifies the Court's conclusion that Baum satisfies the intent required under section 727(a)(2) (intent to hinder, delay, or defraud) and section 727(a)(4) (knowingly and fraudulently).

Remaining Causes of Action

60. Causes of action one through four relate to Baum's failure to timely file schedules while he was proceeding *pro se*. While the Court does not condone Baum's failure to timely file schedules and does not necessarily find his excuses for failing to timely file schedules as particularly credible, the Court did grant the Baums additional time to file schedules after they retained counsel. The schedules were filed within the time allowed and well before the reset

creditors' meeting. *See* Findings 13-18. Given such circumstances, the Court concludes that denying Baum's discharge for these causes is inappropriate.

61. The Court, having concluded that Baum's discharge should be denied under section 727(a)(2) of the Bankruptcy Code for concealing assets from the Trustee, finds it unnecessary to address the Trustee's eighth cause of action, which concerns Baum's purported transfer of horses out-of-trust. It is likewise unnecessary to further address the thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and nineteenth causes of action which also relate to the transfer of horses.

62. The Trustee's ninth and tenth causes of action allege that Baum made a false oath or account by inflating the value of his claims against the Texas Department of Transportation. The Court is satisfied that the values of such claims are inflated, but finds the evidence insufficient to establish that Baum's statements were made knowingly and fraudulently.

63. The evidence is insufficient to establish that Baum discouraged potential purchasers of the horses located on property owned by the Double-C Riding Club, as alleged in the eleventh cause of action.

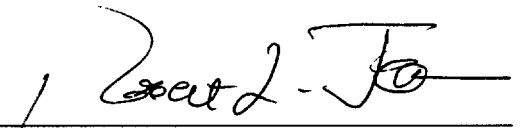
64. If appropriate, these conclusions of law shall be considered findings of fact.

Conclusion

John C. Baum's discharge is denied under section 727(a)(2) and (a)(4) of the Bankruptcy Code. He concealed his ownership of the portable arena; he concealed his ownership of numerous firearms; and, he attempted to conceal or transfer his horses, Colonel Stone, Hickorys Up In Smoke, Justalena Peppy Dawn, and Tari Gay Diamond. The concealment or transfers of these items of personal property were made with the requisite

intent to hinder, delay, or defraud under section 727(a)(2) of the Bankruptcy Code. Likewise, Baum's failure to disclose his ownership or transfer of the diamond tennis bracelet and the .45 Colt handgun, as well as his failure to disclose his ownership or disposition of numerous firearms, was done knowingly and fraudulently and thus constitutes a violation of section 727(a)(4) of the Bankruptcy Code.

SIGNED March 30, 2005.



ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE